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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/583,470

06/19/2006

Hasse Sinivaara

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2493

32294

7590

02/06/2009

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EXAMINER

CUMMING, WILLIAM D

ART UNIT

PAPER NUMBER

2617

MAIL DATE

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02/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/583,470	<b>Applicant(s)</b> SINIVAARA, HASSE	
	<b>Examiner</b> WILLIAM D. CUMMING	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21 is/are allowed.
- 6) ☒ Claim(s) 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 23 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

A 35 USC § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under 35 USC § 101 and should be rejected as being directed to non-statutory subject matter. Thus, to qualify as a 35 USC § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876). *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 22 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 22 is subject to an undue breadth rejection under 35 U.S.C. 112, first paragraph. *In re Hyatt*, 708 F.2d 712, 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983) When claims depend on a recited property, a fact situation comparable to *Hyatt* is possible, where the claim covers every conceivable structure (an interface) for achieving the stated property (to read a set of capability parameters) while the specification discloses at most only those known to the inventor.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 22 and 23 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by **Meggers, et al.**

Meggers, et al discloses an apparatus, comprising an interface ("An output interface OI prioritises data packets in the first EDF and the second queue FIFO. Advantageously, a blocking of data packets in one queue can be avoided by choice of a priority-strategy, which guaranties to a certain extend read-outs of data packets from both queues." and "In another embodiment, the controller could preliminary choose a monetarily valuable throughput rate out of the range given by the minimum required throughput  $R_l$  and the maximum throughput  $R_h$ . If the chosen throughput value is not available, the controller can trigger an adaptation of sub-streams that are already admitted for real time processing at the packet scheduler in order to make said chosen throughput value available. Data packets of a sub-stream that is admitted for real-time processing are sent to a packet scheduler 80. The information, whether they are admitted for real-time processing, can be given from the admission controller to the scheduler either via signalling or by use of a dedicated transmission channel or a dedicated port at the packet scheduler reserved for real-time traffic. If a throughput rate has been chosen, it can be communicated to the packet scheduler or to an output interface OI in a similar way in order to be considered for a further processing of the sub-stream") configured to read a set of capability parameters ("Furthermore, a method comprising the following steps can be performed: detecting in a data packet stream, which carries real-time data traffic, and which is received at an admission controller AC, a first admission control packet ACP

comprising admission control parameters, reading at least two admission control parameters  $R_l$ ,  $R_h$  from said first admission control packet, calculating a throughput  $V$  as a difference of a total throughput  $V_{max}$  available at said admission controller AC and a currently occupied throughput  $V_c$ , comparing the throughput  $V$  with the required throughput  $R_l$ , and if the available throughput  $V$  is lower than the lowest required throughput  $R_l$  then rejecting a real time processing of a sub-stream of data packets that follows between said first admission control packet and a second admission control packet, or else choosing a throughput value from a range of throughput values, said range including as limits the lowest required throughput  $R_l$  and a second throughput value  $R_h$ ,  $M$  and admitting a real-time processing of said sub-stream. In addition to the steps above, the step of generating and sending back from the admission controller AC along the sub-stream's transmission path a modified admission control packet comprising throughput capability parameters of said admission controller AC is preferably performed in a further embodiment." **from a wireless communication device** ("In another embodiment, the present invention may be implemented as a computer program (also called application) or a computer program product for use with a processing device like a computer, a mobile phone or another communications device. The delivery of the computer program to said processing device can be done inter alia by read only memory ROM devices, so-called CD-ROM disks, floppy disks, hard disks, through a communications medium like a network, via a modem or by radio via an air interface.")

The set including at least one parameter indicative of capabilities of the wireless communication device, and configured to define, based on the set of capability

parameters, a dedicated quality class set including at least one quality class,

("Another concept for the provision of quality of service is the so-called Differentiated Service Concept, which aims to simplify the classification and scheduling of packets with quality of service requirements by the use of priority bits in a protocol header. All packets belonging to a specific quality of service class will be marked with a corresponding priority bit combination in the Internet Protocol header. The packet flows are marked with the priority bits and policed according to a Service Level Agreement at the edge of the network. In the interior of the network, the packets are scheduled based on the priority bits. For the Differentiated Service Concept reference is given to S. Blake et al., An Architecture for Differentiated Services, IETF RFC 2475, December 1998.")

***Allowable Subject Matter***

7. Claims 1-21 are allowed.
8. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Response to Arguments***

9. Applicant's arguments with respect to claim 19 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



## **12. DUPLICATE COPY OF FORMS FOR FEE PROCESSING NO LONGER REQUIRED**

Numerous United States Patent and Trademark Office (Office) forms utilized for making fee payments in regard to an application, a reexamination proceeding or a patent include language requesting a duplicate copy of the form for fee processing. In the past, the duplicate copy of the form was needed as the paper application file would be in one area of the Office while the processing of the fee would be done in another area of the Office. It is current Office procedure to scan forms containing an authorization to charge or credit a fee amount to a deposit account into the Image File Wrapper (IFW) of an application, a reexamination proceeding or a patent. Once the form is scanned into IFW, it is available and viewable throughout the Office for, *inter alia*, fee processing. As a result, there is no longer a need for the duplicate copy. Office forms (e.g., PTOISBIO5; PTOL-85B; PTOISBII6; PTOISBII7i; PTOISBII7p; PTOISBII8; PTOISB119; PTOISBI22; PTOISBI24A; PTOISBI29; PTOISBI30; PTOISBI3 1; PTOISBI32; PTOISBI37; PTOISBI43; PTOISBI45; PTOISBISO; PTOISBI56; PTOISBR7; PTOISBI58; PTOISBI65; PTOISBI66; PTOISBI94; PTOISBI13PCT; and PTO-1390) will be revised to remove the request for a duplicate copy of the form for fee processing. In the event that a duplicate copy of a form is needed for fee processing (e.g., the form has not been scanned into IFW or the form is submitted in a security application), the Office will make the necessary copy of the form for fee processing. Inquiries concerning this notice may be directed to James Engel, Senior Legal Advisor in the Office of Patent Legal Administration, at (571) 272-7701 or at PatentPractice@uspto.gov.

## **13. USPTO Announces Delay of Effective and Applicability Dates of New BPAI Rules**

In the December 10, 2008 edition of the Federal Register, the USPTO published an announcement noting that the final rule relating to practice before the Board of Patent Appeals and Interferences (BPAI) in ex parte appeals will not take effect on December 10 as originally scheduled. New effective and applicability dates will be identified in a subsequent announcement.

In the interim, the USPTO will continue to accept appeal briefs in either the current format, or the new format as outlined in the final rule.

Read the Federal Register announcement: <http://edocket.access.gpo.gov/2008/pdf/E8-29297.pdf>

Link to final rule amending the rules governing practice before the BPAI (June 10, 2008):  
<http://www.uspto.gov/web/offices/com/sol/notices/73fr32938.pdf>

14. If applicants wish to request for an interview, an *"Applicant Initiated Interview Request"* form (PTOL-413A) should be submitted to the examiner prior to the interview in order to permit the examiner to prepare in advance for the interview and to focus on the issues to be discussed. This form should identify the participants of the interview, the proposed date of the interview, whether the interview will be personal, telephonic, or video conference, and should include a brief description of the issues to be discussed. A copy of the completed *"Applicant Initiated Interview Request"* form should be attached to the Interview Summary form, PTOL-413 at the completion of the interview and a copy should be given to applicant or applicant's representative.

15. If applicants request an interview after this **final rejection**, prior to the interview, the intended purpose and content of the interview should be presented briefly, in writing. Such an interview may be granted if the examiner is convinced that disposal or clarification for appeal may be accomplished with only nominal further consideration. Interviews merely to **restate arguments** of record or to **discuss new limitations** which would require more than nominal reconsideration or new search will be denied.

#### **16. REMINDER FOR ALL REGISTERED PATENT ATTORNEYS AND AGENTS PLEASE UPDATE YOUR CONTACT INFORMATION**

As a registered patent attorney or agent, you will in the near future be able to self-manage your contact information online, at the United States Patent and Trademark Office's (USPTO) website link dedicated to the official roster of attorneys and agents.

##### **How to Update**

The following are the steps to get started on self-managing your information.

1. By March 1, 2009 - Please check the current roster to ensure that your business mailing address is accurate. If it needs to be changed, please provide the USPTO's Office of Enrollment and Discipline (OED) with your current business mailing address. ("How To Correct Your Information" steps are detailed below.)

2. OED will mail to you a password. Separately, OED will mail you a valid user identification. Thus, you should expect two mailings. OED plans to mail the password and valid user ID to all practitioners after March 1, 2009.
3. After you receive your password and valid user ID, you will be able to change your address and telephone number information, as well as input your e-mail address. OED will not insert or change a practitioner's e-mail address. To avoid unsolicited spamming and communications, a practitioner's e-mail address will not be made public.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **WILLIAM D. CUMMING** whose telephone number is 571-272-7861. The examiner can normally be reached on Tuesday- Friday, 11:00am-8:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dwayne Bost can be reached on 571-272-7023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/WILLIAM D CUMMING/  
Primary Examiner  
Art Unit 2617